

came about from July to December, 1920, though naturally it gave rise to some problems of a more or less difficult character, was much less a cause of anxiety and loss than were the quite unprecedented alterations of the relative values of the various qualities and grades of cotton which occurred simultaneously with the general downward movement of the price."

This unusual, abnormal and chaotic condition in the cotton goods industry during the year 1920 has given rise to much tax litigation involving the valuation of cotton inventories in that year but no other court or judicial body has ever made any such findings with respect to those conditions as were made by the District Court and the Circuit Court of Appeals in the cases at bar.

In the case of *Bedford Mills v. United States*, 59 F. (2d) 263, which involved the valuation of a cotton goods inventory as of June 30, 1920, the end of that company's taxable year, the Court of Claims made special findings of fact as to the market conditions as follows:

"13. The year 1920 witnessed a chaotic situation in the cotton goods industry. The prices of cotton goods had begun to advance in the early spring of 1919, and that advance had continued steadily and rapidly throughout the remainder of the year 1919 and until March and the forepart of April, 1920 when the prices attained were the highest reached since the Civil War. The mills were producing goods to the full extent of their capacities, and the demand for cotton fabrics greatly exceeded available supplies. The rise in prices was arrested in the latter part of April following the financial troubles in Japan with the attendant disruption and disorganization of the silk industry. The market at that time became dull. During the month of

May the cotton goods business slowed up very perceptibly, and on a comparatively dull market, prices began to weaken. The plaintiff's particular field in the cotton goods industry was adversely affected by the changing conditions, which in June were marked by declining prices, the curtailing of production by mills, the cancellation of orders, and return of merchandise by customers, and by their endeavors to reduce their stocks through resale of their merchandise, thereby weakening the market price therefor."

In the case of *Franklin Mills v. Commissioner*, 7 B. T. A. 1290 in which the Commissioner acquiesced, the question was the value of that company's cotton goods inventory as of August 31, 1920, the same as in the cases at bar. The Board of Tax Appeals held that because of the abnormal conditions existing at that date, the company should be allowed a period of sixty days before or after the close of its fiscal year in order to determine the true taxable value of its inventory. In the course of the opinion the Board said:

"The third issue presents the principal item in this proceeding and involves the inventory of petitioner of finished goods as of August 31, 1920. There can be no question that the market at the end of the fiscal year, for the goods in question, was most abnormal. Sales were infrequent; contracts of purchase were being freely cancelled. It is admitted by counsel for the respective parties, that the market for finished goods obtaining on August 31, 1920, should not be arbitrarily taken. . . . The sale by petitioner of one-half of its finished goods, *within sixty days before and following the close of its fiscal year*, represents to us a reasonable period for determining the market for the finished goods, and it follows that petitioner's inventory of

finished goods should be valued at the market thus established, . . .” (*Italics supplied.*)

It is clear from all of the evidence and the authorities that during the last half of the year 1920 most of the sales of cotton goods which were made were on the basis of “at value”. With this in mind, Mr. Redman, the witness for the plaintiff, was questioned and answered (R. p. 103) as follows:

“Q. If you had sold goods such as the Willard Manufacturing Company had in any part of August, or up to September 30th, at value, what price would you have charged . . . having in mind that the schedule made in the spring was maintained until September 30th?

“A. If we sold the Willard Manufacturing Company goods at value and did not make a new price until September 30th, we would have charged them the later price. That is instead of 65 cents, which was the price, we would have charged them 49½ cents which was the price that came out September 30th.”

All of the foregoing evidence, together with much other evidence of the same character which appears in the record, was offered to show that by reason of the market conditions existing in the cotton industry on August 31, 1920 this case comes squarely within the provisions of *Article 1584 of Regulations 45* (p. 25, *infra*) which among other things states as follows:

“Where no open market quotations are available, the taxpayer must use such evidence of a fair market price at the date or dates nearest the inventory as may be available such as specific transactions in reasonable volume entered into in good faith, or compensation paid for cancellation of contracts for purchase commitments. Where, owing to abnormal conditions, the taxpayer has

regularly sold such merchandise at prices lower than the current bid price as above defined, the inventory may be valued at such prices, and the correctness of such prices will be determined by reference to the actual sales of the taxpayer for a reasonable period before and after the date of the inventory."

It is respectfully submitted, therefore, (1) that both the District Court and the Circuit Court of Appeals erred in their interpretation of *Article 1584 of Regulations 45, supra*, as applied to the facts and circumstances of the cases, (2) that the findings of neither the District Court nor of the Circuit Court of Appeals with respect to market values or market conditions existing on August 31, 1920 is supported by any substantial evidence and (3) that the decisions of both of those Courts are directly in conflict with the findings and rulings of other Courts and the United States Board of Tax Appeals with respect to market conditions existing in the cotton industry on August 31, 1920.

#### THE FIFTH GROUND.

The case of *Elder Manufacturing Company v. United States*, 10 Fed. Supp. 125 which is the sole authority cited in the opinion of the Circuit Court of Appeals as a basis of its decision is clearly not in point because the inventory date in that case was April 30, 1920 when conditions in the cotton trade were normal whereas in the cases at bar the inventory date is August 31, 1920 when conditions were abnormal and there had occurred a great drop in the prices of raw cotton and all kinds and grades of cotton fabrics. That case was decided on March 4, 1935 when the cases at bar were still undecided by the District Court. In applying regulations 1582 and 1584 to the inventory date April 30, 1920 the Court in that case said:

"The term 'market' used in the statute and the regu-

lations in the phrase 'cost or market, whichever is lower', means the market price which plaintiff would have to pay for the merchandise in the inventory on the inventory date and not the price at which he sells such merchandise or offers its for sale."

The meaning of the term "market" as thus stated by the Court of Claims is sound and pertinent in so far as the inventory date of April 30, 1920 is concerned or at any other date where conditions in the trade are normal. We respectfully submit, however, that this decision is not a sound authority and guide in the cases at bar where the inventory date is August 31, 1920 when the conditions were so chaotic and abnormal. The evidence clearly shows that under the conditions prevailing on August 31, 1920 the plaintiff could have gone into the market and replaced its entire cotton inventory on the basis of "at value prices" which would mean the prices shown on the jobbers' September 30 price list instead of those shown on their price list made up in April and May. Even though the lists were not changed until September 30, 1920 the cotton goods which the plaintiff had on hand were not worth the April and May prices for which the government contends because as pointed out by the District Court (R. p. 29) "the market price for raw cotton had declined 26% between May 1 and August 31, 1920 and the price of grey cloth had declined during that time 39%". Thus, on August 31, 1920, the petitioner could have replaced its entire inventory, or purchased the equivalent, on the basis of "at value" prices which would be \$135,209.16, as shown on the September price lists, instead of \$167,609.69, as shown on the price lists which had been made up in April and May, 1920.

**CONCLUSION.**

In conclusion we respectfully request this Honorable Court, in passing upon the petition for certiorari to consider the equity of the whole matter as well as the great expense and delays which the petitioner has encountered in its effort to secure a just and fair adjudication of its claim. In the case of *Stone et al. Trustees v. Thomas W. White, Former Collector of Internal Revenue*, 301 U.S. 532; 57 S. Ct. 851, 852, Mr. Justice Stone said:

“The action, brought to recover a tax erroneously paid, although an action at law, is equitable in its function. . . .

“Its use to recover upon rights equitable in nature to avoid unjust enrichment by the defendant at the expense of the plaintiff, and its control in every case by equitable principles, established by Lord Mansfield in *Moses v. Macferlan*, 2 Burr, 1005 (K. B. 1750), have long been recognized in this Court. . . .”

For all of the foregoing reasons, it is respectfully submitted therefore, that the petition for certiorari in these cases should be granted.

Respectfully submitted,

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